

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 2643 of 2004
with
CIVIL APPLICATION NO 10292 OF 2004
In
SPECIAL CIVIL APPLICATION No. 529 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SABARMATI RETI UDYOG KAMDAR SAHAKARI MANDALI LIMITED - Appellant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Appellant(s) : 1,
MR KT DAVE, AGP, for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 27/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1.Heard Shri Majmudar for the appellant and learned AGP

Shri K.T.Dave, appearing on the advance copy of this Appeal and Civil Application being served upon him.

2.The appellant - original petitioner Sabarmati Reti Udyog Kamdar Sahakari Mandali Ltd., is constituted and registered under the Gujarat Co-Operative Societies Act. It has filed writ petition i.e. Special Civil Application No.52 of 2003 before this Court under Art.226 of the Constitution and prayed in Para : 7(b) that a writ of mandamus or any other appropriate writ, order or direction be issued and the impugned orders dated 3.1.2003 passed by the State of Gujarat in Industries and Mines Department confirming the order passed by the Deputy Director on 4.2.1997 and order dated 31.8.1996 passed by the Collector, Ahmedabad, be quashed and set aside. In Para : 7(c) it is prayed that a writ of mandamus or any other appropriate writ, order or direction be issued and it may be held that the petitioner is entitled to have excavation rights/quarry lease rights upon the land situated beyond 500 meters periphery from french well and/or alternatively, to direct the respondent to give quarry lease permission to the petitioner society in the remaining area of 30 Hectares land. The said writ petition i.e. Special Civil Application No.529 of 2003 with Civil application

No.6053 of 2003 and Civil Application No.8348 of 2003 came to be dismissed by the learned Single Judge of this Court (M.R.Shah, J.) by his order dated 29.6.2004, which is challenged in this Appeal.

3.Learned Counsel Shri Majmudar for the appellant vehemently submitted that learned Single Judge committed grave error in dismissing his writ petition and Civil Application by his order dated 29.6.2004 on the ground that the impugned order passed by the Collector, Ahmedabad, on 31.8.196 (Annexure : A) not renewing the quarry lease of the petitioner which was confirmed in Appeal by the Additional Director on 31.1.1997 (Annexure : B) and further confirmed in Revision by the State Government by its order dated 3.1.2003 (Annexure : C) were challenged by the petitioner under Art.227 of the Constitution of India and the adverse decision taken by the Authorities were in public interest, therefore, no interference was called for by him in exercise of his powers under Art.227 of the Constitution. For making this submission good Shri Majmudar has first taken us through the Memo of writ petition and pointed out that he had filed Special Civil Application only under Art.226 of the Constitution and in fact he has prayed for a writ of

mandamus which could only be issued under Art.226 of the Constitution. Shri Majmudar also submitted that merely because the petitioner had challenged the impugned orders at Annexures : A, B & C passed by the Collector, Additional Director and the State Government respectively, that would not mean that this petition would become the petition under Art.227 of the Constitution. He, therefore, submitted that the present Appeal before this Court is maintainable. However, learned AGP Shri Dave for the respondents submitted that by labelling the petition under Art.226 of the Constitution it would not become the petition under Art.226 of the Constitution. In fact, before the learned Single Judge, the learned counsel for the petitioner had argued the petition as if it was a petition under Art.227 of the Constitution which is clear from Para : 3 of the Judgment of the learned Single Judge and, therefore, the learned Single Judge also observed in Para : 9 of his order that having regard to the facts and circumstances of the case permission to excavate sand cannot be given to the petitioner as it is likely to affect the water supply and it is also likely to cause mosquito brooding which would not be in the interest of public and, therefore,

refused to exercise his superintendence powers under Art.227 of the Constitution. He, therefore, submitted that the present LPA is not maintainable before this Court against the Judgment and order dated 29.6.2004 passed by the learned Single Judge.

4.Having heard the learned Counsel Shri Majmudar for the appellant and learned AGP Shri Dave for the respondent and having carefully gone through the Judgment and order passed by the learned Single Judge of this Court as well as the averments made in the petition and the prayer made in it, we are of the considered opinion that though the appellant - petitioner has labelled his petition as petition under Art.226 of the Constitution, strictly speaking it was a petition under Art.227 of the Constitution and the learned Single Judge also exercised his writ jurisdiction only under Art.227 of the Constitution. Therefore, we are of the opinion that in view of two Division Bench Judgments of this Court viz. (i) TALUKA DEVELOPMENT OFFICER, PATAN v/s. SADAJI KUVARJI THAKORE, reported in 2004 (I) XLV (I) GLR 502 and (ii) ISHWARBHAI NAROTTAMBHAI PATEL v/s. K.H.TRIVEDI & ORS. Reported in 2003 (3) GLR 1878, present Appeal before this Court would not be maintainable.

5.In the case of ISHWARBHAI (supra) in Para : 12(ii) the

Division Bench of this Court has clearly held that .."If the judgment rendered by the learned Single Judge is in exercise of jurisdiction under Art.227 of the Constitution, Letters Patent Appeal would not be maintainable." In view of the aforesaid binding decision of Division Bench of this Court, in our considered opinion, the Appeal is required to be dismissed on the ground of its maintainability as, in our considered opinion, the present Appeal would not be maintainable against the Judgment and order passed by the learned Single Judge.

6.Having held that the present Appeal before this Court is not maintainable, we would have rested here. But, Shri Majmudar insisted to deal with his submissions on merit also as if the present Appeal before this court was maintainable and, therefore, we have dealt with the submissions made by Shri Majmudar on merit.

7.On merit, Shri Majmudar vehemently submitted that the learned Collector has not at all applied his mind while passing the impugned order at Annexure : A. He submitted that the appellant Society is of poor labourers who have no means of livelihood except excavating sand from river Sabarmati. He submitted that the State Government took the decision not to give

quarry lease by digging out the land from river Sabarmati on the request made by the Ahmedabad Municipal Corporation as, according to the Corporation, because of dig pits in the Sabarmati river mosquitoes were reared in a stagnant water of the pits which was not in public interest. Such a ground was not relevant at all for deciding their case. Shri Majmudar submitted that the main reason for rejecting the renewal Application assigned by the Collector in his order is not paying (i) the lease surface rent Rs.15,200/-, (ii) not paying the amount of Rs.1,11,182/- towards Royalty/dead rent as per the order of the Hon'ble Supreme Court dated 5.3.1986, and (iii) not paying lump sum royalty of Rs.1,89,000/- for the period from 14.9.1974 to 28.4.1978. He submitted that because of their poor financial condition they could not pay up the said amount. Therefore, they had filed Appeal before the State Government. Hence, this should not have been considered by the Collector for rejecting their renewal Application. However, the learned Collector simply brushed aside their case by stating that such an explanation cannot be accepted. No reasons, whatsoever, were assigned by the Collector for not accepting the explanation of the petitioner. This

submission of Shri Majmudar has no substance. It is clear from the impugned order, at Annexure : A, passed by the Collector that on the request being made by the Ahmedabad Municipal Corporation, the State Government, in the larger interest of public, rightly took a decision of not granting any permission for quarry lease for digging out sand from river Sabarmati as it was affecting the health of people of Ahmedabad City at large. It was not disputed by Shri Majmudar that the appellant - petitioner failed to pay either (i) lease surface rent amount of Rs.15,200/- or (ii) interest of Royalty/dead-rent as per the order of the Hon'ble Supreme Court dated 5.3.1986 and (iii) lump sum amount of Rs.1,89,000/- from 14.9.1974 to 28.4.1978. In that view of the matter it cannot be said that the Collector has either taken perverse view of the matter while passing the impugned order. This impugned order passed by the learned Collector was confirmed by the Appellate Authority i.e. Additional Director and also by the State Government. We have carefully gone through the order passed by all the Authorities as well as the order passed by the learned Single Judge and we are fully satisfied that no error was committed by them. Therefore, even if the Appeal was maintainable against

the Judgment and order passed by the learned Single Judge before this Court then also we would have never interfered with such order in this LPA.

8. In view of the above, this Appeal fails and is hereby dismissed. However, there shall be no order as to costs.

9. As the main Appeal is dismissed, Civil Application No.10292 of 2004 is also disposed of.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)

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